WP(C) 793/2004
BEFORE
THE HON'BLE MR. JUSTICE RANJAN GOGOI

JUDGMENT AND ORDER
(ORAL)

Heard Sri NNB Choudhury, learned counsel for the petitioner and Sri G.Soren, learned Government Advocate, Assam.

2. An order dated 2.6.2003 passed by the Chief Electoral Officer and Commissioner and Secretary to the Government of Assam, Election Department, Assam discharging the petitioner from service has been assailed in the present writ petition.

3. The facts, in brief, may be noticed at the outset:

By an order dated 20.11.1996 the petitioner was appointed as a casual Driver in the Office of the Chief Electoral Officer, Government of Assam, at a consolidated pay. The said appointment was for the period from 5.12.1995 upto 29.2.1996. Thereafter, the service of the petitioner was extended from time to time by a series of extension orders until he was regularly appointed on 21.6.1999 against a sanctioned post. The aforesaid regular appointment was pursuant to an advertisement dated 19.11.1997 and a selection held in the year 1998. It is the case of the petitioner that he joined pursuant to the said appointment order on the same date, i.e., on 21.6.1999.

By an order dated 22.12.2000 the petitioner was placed under suspension with effect from 17.12.2000 on the ground that the petitioner was involved in a Criminal Case in connection with which he was remanded to custody till 1.1.2001. While the petitioner was under suspension, he received a show cause notice dated 15.10.2001 drawing up a departmental proceeding against him and requiring him to show cause as to why he should not be punished. A reading of the show cause notice dated 15.10.2001, along with the statement of allegations and the list of documents appended thereto, shows that the charge against the petitioner was that he was arrested in connection with a Criminal Case involving the kidnapping of a girl, namely, Smt. Urmila Das and having illicit relationship with the girl resulting in her pregnancy. On the said facts, the petitioner was charged of being engaged in an illegal and immoral act, showing disregard to the authority of law and further of having failed to carry out his duties with sincerity and devotion.

4. On receipt of the aforesaid show cause notice, the petitioner submitted his reply on 29.10.2001. In the reply, while admitting his arrest and remand to judicial custody till 1.1.2001 in connection with the Criminal Case in question, the petitioner had taken the stand that Smti. Urmila Das and the petitioner were having a love affair from before for which reason they had eloped on 16.12.2000, whereafter the petitioner was arrested by the police. In the reply filed, the petitioner had further stated that after he was released from jail custody, he and Smti. Urmila Das had got married under the Special Marriage Act and that such marriage was with the consent of the girl's parents. The petitioner had enclosed with his reply a photocopy of the marriage certificate issued by the competent authority. In these circumstances, the petitioner prayed before the concerned authority for dropping the departmental proceeding against him.

5. In the Criminal Case instituted against the petitioner, after due investigation, the police submitted the final report exonerating the petitioner from the charges leveled. By an order dated 1.2.2002 passed by the learned Chief Judicial Magistrate, Kamrup, Guwahati the final report submitted was accepted, and the petitioner, who was an accused in the said case, i.e., GR Case No.4750/2000 was discharged from all liabilities.

6. Thereafter, nothing appears to have been done for a considerable period

of time. The petitioner continued to remain in a sate of animated suspension. Finally, on 2.6.2003 the Chief Electoral Officer, Assam passed an order in the departmental proceeding by taking the view that as the petitioner, in his reply dated 29.10.2001, had admitted the charges leveled against him and that as the petitioner was on probation, he is being discharged from service on the ground that the petitioner's continuance in service would embarrass the Government and set a bad precedent. Aggrieved, this writ petition has been filed.

7. No affidavit has been filed by the Respondents notwithstanding the fact that the case has remained pending for nearly 3(three) years. In the absence of such an affidavit the statements made by the writ petitioner, having remained uncontroverted, must be accepted as correct. In any case, the relevant facts necessary for an adjudication of the validity of the impugned discharge order being discernible from the official record, copies of which had been placed before the Court along with the writ petition, the Court finds no impediment in disposing of the writ petition on the basis of the materials available on record.

8. The charges brought against the petitioner have already been noted. He has been charged with the offence of kidnapping and having an illicit relationship with an unmarried girl resulting in her pregnancy. This has been considered to be an act of moral turpitude rendering the petitioner unfit to be retained in Government Service.

In the reply dated 29.10.2001 the petitioner had stated that there was a previous love affair between him and Smti. Urmila Das and that on 16.12.2000 both of them had eloped, whereafter he was arrested by the police. The petitioner, in his reply, had further stated that on being released from custody, he and Smti. Urmila Das had married with the consent of the parents of the girl and in this regard the petitioner had enclosed a copy of the marriage certificate to the reply filed by him before the competent authority. The Criminal Case against the petitioner had ended in a final report exonerating the petitioner from the charges levelled. In such a situation, on the very face of it, the decision of the Chief Electoral Officer to discharge/terminate the petitioner from service on the very same ground cannot be held to be legally warranted or justified.
In the order dated 2.6.2003 the Disciplinary Authority of the petitioner has recorded that the petitioner had admitted the charges leveled against him. This is plainly incorrect, inasmuch as, the petitioner in his reply dated 29.10.2001 had categorically denied the charges leveled against him and had mentioned the facts and events that had occurred including the previous love affair between the two and the ultimate marriage, as proved by the marriage certificate issued by the competent authority. In such circumstances, no reasonable person, in the considered view of the Court, could have come to the conclusion that the petitioner should be held guilty of the charges leveled against him in the show cause notice dated 15.10.2001. The Court is also of the view that the findings recorded by the Disciplinary Authority that the acts of the petitioner and his continuance in service would embarrass the Government and set a bad precedent are equally unsustainable being unreasonable and unwarranted. If the petitioner had a love affair and had eloped with the girl of his choice and thereafter had married her, which is what had happened in the present case, it is difficult to see how the Government would be embarrassed and a bad precedent would be set by the said acts so as to justify the petitioner's termination from service. In the above facts, the conclusion is obvious. Viewed rationally and reasonably, the order dated 2.6.2003 of the Chief Electoral Officer, Assam, has to be held by the Court as an arbitrary and unreasonable order besides being disproportionate. Such an order, surely, must not be allowed to remain on record.

9. For the aforesaid reasons, I allow the writ petition, set aside the order dated 2.6.2003 passed by the Chief Electoral Officer, Assam and direct the reinstatement of the petitioner in service with back wages and all other consequential service benefits to which he would be entitled in law. The Respondent author

ity will comply with the present directions forthwith and in any case within an outer limit of 30 days from the date of receipt of a copy of this order or a certified copy thereof.